LIBRARY
SUPREME COURT, U. S.

FILED
MAR 10 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968.

No. 1137

IN THE MATTER
OF
SAM HABER, HERBERT A. SULSKY and IRWIN E. SIMENOWITZ, attorneys.

SAM HABER,
Petitioner,

against

SAMUEL GREASON,
Respondent.

To THE HONORABLES, THE CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Petition for Writ of Certiorari to the Supreme Court of the State of New York, Appellate Division, Second Department.

SAM HABER,
Attorney, pro se,
3 Old Estate Road,
Glen Cove, L. I., N. Y.

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 RE 2-6978—1969

Table of Contents.

	Page
Opinions Below	2
Jurisdiction	2
Proceedings Below	2
Questions	3
Constitutional Provisions Involved	3
Statement	4
Reasons for Allowance of the Writ	5
Conclusion	6
APPENDIX:	
Opinion on Order of the Appellate Division	7
Order of the Court of Appeals Affirming Order of the Appellate Division Without Opinion	12

CASES CITED.

Matter of Gault, 387 U. S. 1, 87 S. Ct. 1428	5
Matter of Ruffalo, 390 U. S. 554, 88 S. Ct. 1222	5
Spevak v. Klein, 385 U. S. 511	
Zuckerman v. Greason, 386 U. S. 15	

IN THE

Supreme Court of the United States

October Term—1968.

No.

IN THE MATTER

of

Sam Haber, Herbert A. Sulsky and Irwin E. Simenowitz, attorneys

SAM HABER,

Petitioner,

against

SAMUEL GREASON,

Respondent.

To The Honorables, The Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States.

Petition for Writ of Certiorari to the Supreme Court of the State of New York, Appellate Division, Second Department.

The petitioner above named respectfully prays that a writ of certiorari issue in the above captioned case, directed to the Supreme Court of the State of New York, Appellate Division, Second Department, to review its order dated December 28, 1966, finding petitioner guilty of professional misconduct in the practice of law. 27 A. D. 2d 576 (2nd Dept. 1966).

Opinions Below.

The only opinion was that which accompanied the order of the Appellate Division of the Supreme Court of the State of New York, Second Department, reported in 27 A. D. 2d 576 (1966).

The Court of Appeals affirmed the order of the Appellate Division without opinion on December 12, 1968.

Jurisdiction.

The order of the Court of Appeals, which finally determined this proceeding in New York, was dated and entered December 12, 1968. The time within which this petition for a writ of certiorari may be filed will expire on March 11, 1969. The jurisdiction of this Honorable Court is invoked under Title 28, United States Code, Section 1257.

Proceedings Below.

A disciplinary proceeding against the petitioner was directed by order of the said Appellate Division dated July 19, 1965. A single issue was raised by the petition and was referred to the Hon. Mario Pittoni, a Justice of the Supreme Court, for hearing and report. His report was dated March 31, 1966, and filed with the Appellate Division on April 1, 1966.

The order of the Appellate Division referred to above confirmed the report of the Referee and censured petitioner's partners but stated as to petitioner: "Since Sam Haber is already under suspension for five years, no further punishment is presently imposed, but this offence may be considered upon his application for reinstatement as an attorney and counsellor at law" (8).

Petitioner timely appealed to the Court of Appeals which affirmed the order of the Appellate Division without opinion.

All available remedies in the State of New York have been exhausted and proceedings in the state courts are concluded and final.

Questions.

1. Can an attorney's right to enter into a historically proper and legal partnership agreement be restricted by what might happen in the future so as to make the entering into the partnership agreement unethical conduct without being held to have denied due process to such an attorney within the contemplation of the Constitution of the United States of America?

2. Can an attorney be disciplined where the sole evidence against him was a partnership agreement, which was not unethical when entered into, and was never acted upon subsequent to his suspension, without being held to have denied due process to such an attorney within the contemplation of the Constitution of the United States of America?

3. May discipline against an attorney be deferred without it constituting cruel and inhuman punishment in violation of the Constitution of the United States?

Constitutional Provisions Involved.

United States Constitution, Fourteenth Amendment:

> "Section 1. • • • nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution of the State of New York, Article I, Section 6 (as pertinent):

> "No person shall be deprived of life, liberty or property without due process of law."

Statement.

Petitioner was charged with only one act, which was that in entering into a partnership agreement in November, 1963, "with full awareness of the disciplinary proceedings then pending against Zuckerman and Haber (he) intended to circumvent and nullify the consequences of possible disciplinary treatment" (pp. 6 and 7, transcript). The matter was brought to the attention of the Appellate Division when one of petitioner's law partners, immediately following petitioner's suspension, wrote to the Appellate Division for guidance (pp. 55-58, 79, 81, transcript). No moneys were ever paid nor was anything done "in furtherance of" the agreement by petitioner or his partners following petitioner's suspension from the practice of law (pp. 57, 58, 91-94, 111, 125, transcript). The agreement, entered into at arm's length, reflected petitioner's desire to retain proficient employees and possibly to retire (pp. 22-28, 34, 112-113, transcript). The compensation arrangement bore out the value of the 400-500 cases actually in process and the moneys spent on those cases as agreed upon by all of the parties to the said agreement (pp. 46-48, 119-120. See also letter to Judicial Inquiry by Herbert A. Sulsky set forth in brief of Francis A. McGrath, pp. 13 and 14, setting forth exact amounts considered in entering into agreement that is subject of the proceeding).

Reasons for Allowance of the Writ.

This Court has repeatedly held that disciplinary proceedings are quasi-criminal in nature. The allegation of avoiding the consequences of a *possible* disciplinary proceeding which petitioner "did not contemplate the eventual result" (p. 121, transcript), as the basis of a quasi-criminal finding of guilt violates the provisions of the 14th Amendment to the Constitution of the United States (*Matter of Gault*, 387 U. S. 1, 87 S. Ct. 1428; *Matter of Ruffalo*, 390 U. S. 554, 88 S. Ct. 1222), and is repugnant to the concept that a man is innocent until proven guilty. The "eventual result" referred to was an order dated March 3, 1965, rendered one and one-half years after the agreement in question was entered into and in fact this very order was later vacated by the Supreme Court of the United States (386 U. S. 15). The attempt to discipline an attorney for his alleged state of mind as to possible future consequences seriously affects the rights of all members of the bar of the respective states to enter into professional contracts and clearly violates the provisions of the 14th Amendment to the Constitution of the United States.

The respondent contended in the Court of Appeals that a disciplinary proceeding is civil in nature and therefore proof beyond a reasonable doubt is not required.

The finding by the Appellate Division that the petitioner was guilty of committing a quasi-criminal act was based upon speculation, conjecture and inference on inference rather than testimony or evidence. The uncontroverted testimony and evidence clearly proves that the payments to be received by the petitioner under the agreement were directly proportionate to a *quantum meruit* evaluation of his interest in the firm. The find-

ing below is a clear violation of petitioner's rights under the 14th Amendment to the Constitution of the United States by restricting his right to contract. Nowhere in this record has there been testimony that the valuation of the partnership interest as set forth in the agreement was disproportionate to its actual value, as testified to by petitioner and his law partners, nor was any attempt made by the respondent to prove such fact. There has been no statute or rule prohibiting such a partnership agreement introduced into evidence or set forth by the respondent.

Conclusion.

It is respectfully submitted that the constitutional issues require this Honorable Court to grant the writ sought.

Respectfully submitted,

SAM HABER, *Pro Se*,
3 Old Estate Road,
Glen Cove, N. Y.